

## Update: Managing a Trial Under The Controlled Substances Act

### CHAPTER 9

#### Double Jeopardy in Controlled Substance Cases

##### 9.5 A Controlled Substance Conviction or Acquittal in Another Jurisdiction Prevents Retrial for the Same Offense in Michigan

In *People v Davis*, 472 Mich 156 (2005), the Michigan Supreme Court expressly overruled *People v Cooper*, 398 Mich 450 (1976).

Replace the bulleted discussions of *People v Cooper* and *People v Mezy* beginning near the bottom of page 191 and ending near the top of page 193 with the following:

- ♦ *People v Davis*, 472 Mich 156, 158 (2005)

Two entities seeking to prosecute a defendant for the same offense are separate sovereigns when their authority to prosecute crimes is derived from distinct sources of power, and double jeopardy does not prevent both sovereigns from prosecuting a defendant for crimes arising from the same conduct. In *Davis*, the defendant stole a car in Michigan and drove it to Kentucky where he was apprehended. After the defendant pled guilty and was sentenced for charges brought against him in Kentucky, the State of Michigan charged the defendant with unlawfully driving away a motor vehicle and with receiving/concealing stolen property. The defendant relied on *People v Cooper*, 398 Mich 450 (1976), to argue that double jeopardy considerations prohibited Michigan from prosecuting him a second time for offenses related to a single criminal episode unless Michigan's interests in prosecuting him were substantially different than Kentucky's interests.

According to the *Davis* Court, United States Supreme Court precedent (*Bartkus v Illinois*, 359 US 121 (1959), and *Heath v Alabama*, 474 US 82 (1985)), required that *Cooper* be overruled. In *Bartkus*, the Court concluded that "successive state and federal

prosecutions based on the same transaction or conduct were not barred by the Double Jeopardy Clause.” *Davis, supra* at 162, citing *Bartkus, supra*, 359 US at 122–124. In *Heath*, the Court explained that the same analysis applies to cases of dual sovereignty when the two entities involved are states. When a defendant by the same conduct breaks a law in each of two states, the defendant has committed two separate offenses. *Davis, supra* at 166–167, citing *Heath, supra*, 474 US at 88–89. Relying again on *Heath*, the *Davis* Court wrote:

“The [*Heath*] Court further explained that in cases where it had found the dual sovereignty doctrine inapplicable, it had done so ‘because the two prosecuting entities did not derive their powers to prosecute from independent sources of authority.’ [*Heath, supra*] at 90. The [*Heath*] Court explicitly rejected the balancing of interests approach adopted by this Court in *Cooper*. [*Heath, supra*] at 92–93.” *Davis, supra* at 167.